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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,018	03/29/2007	Artur Schworer	088860-000000US	3942
20350 7590 05/24/2010 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				
EXAMINER SAFAVI, MICHAEL				
ART UNIT 3637		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/585,018

Applicant(s)

SCHWOERER, ARTUR

Examiner

MICHAEL SAFAVI

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22, line 4, to what does “a formwork tie” refer? Would this be the same as one of the “formwork ties” recited beforehand in line 4? Further, it is not clear as to whether the recited formwork ties form part of the claimed invention. The language of claim 22 does not set forth any language to positively connect the “formwork elements” of line 2 with the “formwork ties” and “locking elements” of lines 4-5. Lines 3-10 of claim 22 appear to merely recite a possible use or configuration of the “formwork elements” presented in line 2.

Claim 30, line 3, to what does “it” refer?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 22-41 are rejected under 35 U.S.C. 102(b) as being anticipated by

Fontaine 2,620,542. Fontaine discloses, Figs. 3 and 6 for example, a formwork system, comprising: formwork elements 2 which have mutually oppositely disposed formwork inner surfaces and are connectable to one another spaced apart from one another by means of formwork ties 22, wherein at least one of the formwork ties comprises a bolt element 22 and two locking elements 24/25/29 which, at two mutually remote end regions of the bolt element 22, can be coupled to the bolt element and are formed for the transmission of tensile forces from the formwork elements 2 onto the bolt element and have coupling elements 25/26 for the transmission of compressive forces from the formwork elements 2 onto the bolt element, wherein one of the locking elements 24, 25, 29 is captively connected to the bolt element and the other locking element 24, 25, 29 is releasably connectable to the bolt element. The coupling element 29 is hooked-shaped to hook with undercuts 3 of the formwork elements 2.

Claims 22-41 are rejected under 35 U.S.C. 102(b) as being anticipated by

U.S. Patent Publication 2004/0129857 to Musk et al. Musk et al. discloses, Figs. 1-3, a formwork system, comprising: formwork elements 18 which have mutually oppositely disposed formwork inner surfaces and are connectable to one another spaced apart from one another by means of formwork ties 42, wherein at least one of

the formwork ties comprises a bolt element 46 and two locking elements 52 which, at two mutually remote end regions of the bolt element 46, can be coupled to the bolt element and are formed for the transmission of tensile forces from the formwork elements 18 onto the bolt element and have coupling elements 58, 60 for example, for the transmission of compressive forces from the formwork elements 18 onto the bolt element, wherein one of the locking elements 52 is captively connected to the bolt element and the other locking element 52 is releasably connectable to the bolt element. The locking elements 29 are substantially parallelepiped shaped housing. Use of tapered bolts is taught within paragraph [0021].

Claims 22-41 are rejected under 35 U.S.C. 102(b) as being anticipated by German reference DE 10336414, (DE '414). DE '414 discloses, Figs. 1 and 3 for example, a formwork system, comprising: formwork elements 23 which have mutually oppositely disposed formwork inner surfaces and are connectable to one another spaced apart from one another by means of formwork ties 10, wherein at least one of the formwork ties comprises a bolt element and two locking elements 260 which, at two mutually remote end regions of the bolt element 10, can be coupled to the bolt element and are formed for the transmission of tensile forces from the formwork elements 23 onto the bolt element and have coupling elements 231 for the transmission of compressive forces from the formwork elements 23 onto the bolt element, wherein one of the locking elements 260 is captively connected to the bolt element and the other locking element 260 is releasably connectable to the bolt element. The coupling

element 231 is hooked-shaped to hook with undercuts 236, 24 of the formwork elements 23. The locking elements 260 are substantially parallelepiped shaped housing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fontaine 2,620,542 in view of either of U.S. Patent Publication 2004/0129857 to Musk et al. and Smith 3,198,476.

Each of Musk et al. and Smith teach application and utilization of tapered bolts within a form assembly employing ties. Therefore, to have provided the Fontaine form assembly with tapered bolts, thus utilizing an old and well known threaded tie when desirable, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by either of Musk et al. and Smith.

Claims 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fontaine 2,620,542 in view of either of Strickland 4,159,097.

Strickland teaches Figs. 1 and 2, application and utilization of a threaded sleeve 22 within a form tie assembly with the sleeve running at least a thickness of the

formwork element 4. Therefore, to have provided the Fontaine form assembly with a threaded sleeve with the sleeve running at least a thickness of the formwork element, thus utilizing an old and well known form of covering the threaded tie when desirable, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Strickland.

Claims 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication 2004/0129857 to Musk et al. in view of either of Strickland 4,159,097.

Strickland teaches Figs. 1 and 2, application and utilization of a threaded sleeve 22 within a form tie assembly with the sleeve running at least a thickness of the formwork element 4. Therefore, to have provided the Musk et al. form assembly with a threaded sleeve with the sleeve running at least a thickness of the formwork element, thus utilizing an old and well known form of covering the threaded tie when desirable, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Strickland.

Response to Arguments

Applicant's arguments filed February 19, 2010 have been fully considered but they are not persuasive. Applicant's argument as to "are formed for the transmission of tensile forces from the formwork elements onto the bolt element and have coupling elements for the transmission of compressive forces from the formwork elements onto

the bolt element" appear directed to intended use or desired effect which does not serve to overcome the rejection of claims 22-41. Indeed, each of the references to Fontaine, Musk et al. and German reference DE 10336414 can and do bring about the intended or presumed "transmission of compressive forces from the formwork elements onto the bolt element".

Applicant's argument within the second full paragraph on page 8 of the response is not understood. Each of Fontaine, Musk et al. and German reference DE 10336414 serving to maintain the formwork elements in a spaced apart relationship. Therefore, each of Fontaine, Musk et al. and German reference DE 10336414 would inherently convert any potential movement of the formwork elements into a compressive force acting on the bolt particularly, with the respective coupling elements being connected to the respective bolts in a manner as to cause such.

As for Applicant's arguments to "which is not the claimed structure", the applied references to each of Fontaine, Musk et al. and German reference DE 10336414 serve to read upon the structure of claims 22-41 as is set forth in the above rejections. Applicant does state "facing members...of Musk are not adapted to approach each other. However, such argument is directed to a presumed or intended effect. The facing members of the applied references to each of Fontaine, Musk et al. and German reference DE 10336414 can approach each other and if such were to take effect the respective approaching movement of the respective formwork elements would impart a compressive force on the respective bolt element.

As for Applicant's arguments at the top of page 9 of the response, the above rejection does not appear to delete any elements from the applied references to any of Fontaine, Musk et al. and German reference DE 10336414.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL SAFAVI** whose telephone number is (571)272-7046. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell Jayne can be reached on (571) 272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Safavi/
Primary Examiner, Art Unit 3637

M. Safavi
May 18, 2010